



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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April 22, 2016

Mr. Trevor J. Shea
FCC Petersburg Medium
P.O. Box 1000
Petersburg, VA 23804

Re: Formal Complaint 16-FC-52; Alleged Violation of the Access to Public Records Act by the Indiana State Police

Dear Mr. Shea:

This advisory opinion is in response to your formal complaint alleging the Indiana State Police (“ISP”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. The ISP has responded via Ms. Cynthia Forbes, Esq. ISP’s response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 10, 2016.

BACKGROUND

Your complaint dated March 1, 2016, alleges the Indiana State Police improperly denied you access to your records.

On or about December 28, 2015, you submitted a public records request to ISP for the following records:

Any and all documents or records pertaining to Trevor Shea including, but not limited to, any and all documents or records related to his 2009/2010 criminal investigation and prosecution, his 2012 conviction, and any open, pending, or ongoing investigation.

It is unclear when ISP received your request, however, it responded on February 17, 2016, requesting that you submit a fee for a Limited Criminal History form.

ISP argues that your complaint is not timely – assuming the date of receipt of ISP’s denial took place at some point in January 2016. Furthermore, ISP states the records in its possession are investigatory in nature and it is exercising its discretion to withhold the requested documents.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Indiana State Police is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the ISP’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As ISP correctly states, a denial occurs seven (7) days after a written request goes unacknowledged by a public agency. Given that your request was most likely received by ISP in January, your thirty (30) day window to file a complaint with this Office would have elapsed by the time you dated your formal complaint. Despite this issue, ISP did follow up with correspondence on February 17, 2016. So while your complaint may be untimely, there are some points of interest regarding this situation I would like to address.

A denial from a public agency must be in writing pursuant to Ind. Code § 5-14-3-9(d)(2) if the request was made in writing. It must state the exceptions to disclosure as justification for the denial as well as the name of the decision-maker withholding the records. While this was eventually done, it was untimely under the circumstances. It appears as if there was a miscommunication between ISP’s criminal history department and the legal staff who responds to requests. ISP acknowledges this and has addressed the problem accordingly.

Furthermore, ISP states the records it does maintain which are responsive to your request are investigatory in nature. Pursuant to Ind. Code § 5-14-3-4(b)(1), investigatory records of law enforcement agencies may be withheld at the discretion of the agency. As long as the release of the records would compromise an element of public safety, an expectation of privacy, or an ongoing investigation, such records should be withheld. To the extent any exist, you may seek any investigatory records introduced in court, however, from the court with jurisdiction over your criminal case.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a large, sweeping flourish underneath.

Luke H. Britt

Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.